

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES J. BROWN

Defendant.

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Case No. 2:02-CR-047(1)

JUDGE ALGENON L. MARBLEY

OPINION & ORDER

This matter is before the Court on Defendant James J. Brown's Motion To Correct an Illegal Sentence. Brown pled guilty to one count of conspiracy to distribute over 50 grams of crack-cocaine and to one count of unlawfully possessing a firearm. This Court sentenced Brown to twenty years of imprisonment to be followed by five years of supervised release. Thereafter, because of Brown's substantial assistance to the United States, the Government moved to reduce his sentence pursuant to Federal Rule of Criminal Procedure 35. On January 13, 2006, the Court granted the Government's motion and reduced Brown's term of incarceration to thirteen years. Brown now moves to set aside this order on the grounds that the Court denied him his right of allocution prior to reducing his sentence.

Brown certainly had the right to speak on his own behalf at sentencing. *See* Fed. R. Cr. P. 32(i)(4)(A)(ii) (requiring the Court to "address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence"). But his rights are more limited where the Court reduces his sentence pursuant to Rule 35. Federal Rule of Criminal Procedure 43(b)(4) provides that "a defendant need not be present [for] . . . [a] proceeding [that]

involves the correction or reduction of sentence under Rule 35.” Nor does Brown retain the right to allocution prior to a Rule 35 reduction. *Jones v United States* 381 F2d 351 (5th Cir. 1967); accord *United States v. Woykovsky*, 297 F.2d 179, 182 (7th Cir. 1961) and *United States v. Smith*, No. CR-03-81-B-W, 2007 WL 2937092, at *1 (D. Me. Oct. 05, 2007). Because neither’s Brown’s presence nor his speech was required for the Court to reduce his sentence pursuant to Rule 35, his motion is **DENIED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: February 12, 2008